

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of )  
 )  
Federal-State Joint Board on Universal Service ) CC Docket No. 96-45  
 )

**COMMENTS OF AT&T CORP.  
ON PROPOSALS TO MODIFY HIGH-COST SUPPORT RULES**

Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 C.F.R. §§ 1.415, 1.419, and its Public Notice released August 17, 2005, FCC 05J-1, AT&T Corp. ("AT&T") submits these comments to the Federal-State Joint Board on Universal Service ("Joint Board").<sup>1</sup>

The Commission has referred several issues to the Joint Board concerning how to reform the universal service system for rural carriers, and the Joint Board's Notice seeks comment on four proposals developed by various Joint Board Members and staff.<sup>2</sup> Each of these proposals at its heart would convert today's system into a kind of block-grant program, in which the FCC would determine the amount of universal service funding for each state but the state commission would determine how to allocate that funding within the state. The four plans also contain various other proposals relating to certain other aspects of universal service.

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<sup>1</sup> The Commission subsequently extended the time for comment. See FCC 05J-2, released September 13, 2005.

<sup>2</sup> The four plans are (1) "The State Allocation Mechanism: A Universal Service Reform Package," by Joint Board Member Ray Baum ("SAM"); (2) "Three Stage Package for Universal Service Reform," by Joint Board Member Billy Jack Gregg ("Three Stage Package"); (3) "A Holistically Integrated Package," by Commissioner Robert Nelson ("HIP"); and (4) "Universal Service Endpoint Reform Plan (USERP)," by Joint Board staff members Joel Shifman, Peter Bluhm, and Jeff Pursley ("USERP").

Each of these plans contains many promising elements and deserves further study. The most important item before the Commission, however, is intercarrier compensation reform. There is an urgent need for the Commission to adopt a comprehensive intercarrier compensation reform plan, and the proposals for such reform currently before the Commission are far more developed and ripe for decision. AT&T urges the Commission to adopt the Intercarrier Compensation Forum's ("ICF") reform proposal expeditiously. And in this Joint Board proceeding, the Commission should not actively consider any proposals that may undermine or interfere with the pending intercarrier compensation reform proceeding.

In that regard, the Three-Stage Proposal is the only one of the four proposals that recognizes the need to stagger consideration of the relevant issues so as not to interfere with intercarrier compensation reform. As explained below, the Joint Board should recommend adoption of much of the Stage One proposals in that plan (with minor modifications), including consolidating study areas within a state and freezing or limiting per-line support upon competitive entry, and it should potentially recommend moving larger rural carriers to the forward-looking cost model and extending the rate comparability review process to rural carriers (pending further study). AT&T also generally supports Mr. Gregg's Stage Two proposals, which would unify the method of calculating embedded costs for rural carriers and appropriately accounts for pending changes in intercarrier compensation.

Consideration of block-grant programs, however, is premature. While such an approach has promising aspects and deserves further study, the plans that are currently before the Joint Board simply do not contain enough detail for interested parties to make an assessment of the full, concrete consequences of those plans. Active consideration of these plans now could also have implications for intercarrier compensation reform that would undermine that

proceeding and make consensus harder to achieve. The Joint Board should continue to study the issue and develop more detailed proposals, rather than actively considering such proposals for recommendation at this time.

**I. THE JOINT BOARD SHOULD RECOMMEND IMMEDIATE ADOPTION OF STAGE ONE OF THE THREE-STAGE PACKAGE, WITH MODIFICATIONS.**

The Three-Stage Package, proposed by Joint Board Member Billy Jack Gregg, is the only proposal that appropriately recognizes that intercarrier compensation must take precedence and that the more ambitious reform proposals, such as the block-grant proposals, are actually beyond the scope of the referral to the Joint Board. Public Notice, Appendix B at 1. As Mr. Gregg explains, Stage One of his proposal “can be accomplished within the context of the current Joint Board referral,” and contains “various changes to rationalize and simplify existing rural support systems.” *Id.* Stage One consists of five proposals, and the Joint Board should recommend or potentially recommend four of them (with minor modifications). At the appropriate time, AT&T generally supports Mr. Gregg’s Stage Two proposals as well.

First, the Joint Board should recommend consolidating all of a carrier’s study areas within a state into a single study area for universal service purposes. As Mr. Gregg notes, combining study areas within a state would appropriately recognize the “efficiencies of scale and scope actually enjoyed by each carrier.” Public Notice, Appendix B at 9. It would also “ensure that local switching support goes only to truly small carriers that cannot obtain such efficiencies.” *Id.*

Second, Mr. Gregg’s proposal to limit per-line support upon competitive entry also has merit. Public Notice, Appendix B at 8-9. Limiting per-line support upon competitive entry is important to “prevent per line support . . . from spiraling to unreasonable levels as a result of

lines lost to competitors.” *Id.* at 9. The ICF Proposal addresses this same issue, however, in a more nuanced and appropriate manner, and it should be pursued as outlined there. *See* Letter from Gary Epstein to Marlene Dortch, FCC, dated October 5, 2004, Appendix A at 73-74.

Third, the Joint Board should also further study Mr. Gregg’s proposal to base support for larger rural carriers (those serving more than 100,000 lines) on the forward-looking cost model rather than on embedded costs, but it should be adopted only if those carriers are incorporated into the existing mechanism which includes statewide averaging. Public Notice, Appendix B at 8. Mr. Gregg asserts that his proposed change “should reduce the total amount of high cost support” (*id.* at 9), but he provides no supporting documentation for that statement and it is not correct. The current High Cost Loop Support (“HCLS”) is capped, but support based on the forward-looking cost model (“HCM”) is not. Moreover, under Mr. Gregg’s proposal, large rural companies would *not* be included in a statewide average, as non-rural companies are today. *See id.* at 8 & n.1. As a result, Mr. Gregg’s proposal would appear to lead to a massive and unwarranted increase in funding for these companies – from projected \$78 million of HCLS support to \$735 million of HCM support evaluated at the study area level. Including these large rural carriers in the statewide average, by contrast, would maintain funding at stable levels, and therefore if the Joint Board recommends Mr. Gregg’s proposal, it should be recommended only with that critical modification.

Fourth, Mr. Gregg’s proposal to extend the rate comparability review process to rural carriers is also worthy of further study. In the Commission’s *Tenth Circuit Remand Order*, 18 FCC Rcd. 22559 (2003), issued in response to *Qwest Corp. v. FCC*, 258 F.3d 1191 (10<sup>th</sup> Cir. 2001), the FCC expanded the state certification process to include a requirement that states certify that rates in the rural areas served by non-rural carriers are comparable to nationwide

urban rates.<sup>3</sup> The Commission should first complete its consideration of intercarrier compensation reform and the universal service remand, and then the Commission could consider Mr. Gregg's proposal and tailor any mechanisms adopted to the outcome of those proceedings.

Finally, the Joint Board should *not* recommend that funding for carriers remaining on embedded cost support be determined on the basis of each carrier's own costs. *See* Public Notice, Appendix B at 9-10. Forcing competitive carriers to file extensive cost studies would vastly increase the administrative burden on these carriers, with no appreciable corresponding benefit. New entrants are already limited to support calculated on the basis of the incumbent's costs, and most new entrants face higher start-up costs. Accordingly, few new entrants receive a windfall from universal service funding, and there is no need to modify the rules to address such a problem.

In Stage Two, Mr. Gregg proposes that funding for the remaining rural carriers whose support is based on the modified embedded method, be based on total costs. This total cost methodology would be based on the costs of loop, switching and transport consistently, rather than the different methods and criteria that are employed for loop and switching today. Stage Two is designed to parallel the method employed by non-rural carriers, except the latter uses forward-looking costs rather than embedded costs. In addition, Stage Two would develop an appropriate benchmark, including intercarrier revenues, to compare with costs, and base support on that comparison. This approach appropriately accommodates changes to intercarrier revenues resulting from intercarrier compensation reform, and does so independently of any USF support that accompanies that reform. Although Mr. Gregg acknowledges that a new referral

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<sup>3</sup> This aspect of the *Tenth Circuit Remand Order* was affirmed by the Tenth Circuit. *Qwest Communications International Inc. v. FCC*, 398 F.3d 1222 (10<sup>th</sup> Cir. 2005).

would be necessary for this Stage Two reform, there is merit to the several concepts proposed in his Stage Two.

## **II. THE JOINT BOARD AND THE COMMISSION SHOULD POSTPONE CONSIDERATION OF STATE BLOCK-GRANT PROPOSALS.**

The centerpiece of each of the four proposals is a form of block-grant program, in which the FCC would make a certain amount of universal service funding available to each state, and each state commission would then determine how to allocate those funds among eligible carriers within its state (subject to some FCC guidelines). The leading block-grant proposal is the “State Allocation Mechanism,” or “SAM,” proposed by Joint Board Member Ray Baum. *See* Public Notice, Appendix A. Both the Three-Stage Package and Holistically Integrated Plan endorse SAM essentially as proposed by Commissioner Baum. *See* Appendix B at 12; Appendix C at 14-16. USERP also relies prominently on a block-grant proposal, although USERP’s proposal differs from the SAM proposal in a number of details. *See* Public Notice, Appendix D at 20-25.

The Commission and the Joint Board should postpone consideration of these proposals for several reasons. First, the proposals that are currently before the Joint Board simply do not contain enough detail to permit the Commission to propose rules. These proposals describe only the broad, conceptual outlines of a block-grant program, but as the old saying goes, the “devil is in the details.” There is no description whatsoever in these proposals as to how the Commission could operationalize any of these plans. Comprehensive reform proposals often have many unintended consequences, and interested parties will have no ability to begin to assess the concrete impacts of any plan until these broad conceptual outlines have been worked through to a more detailed set of procedures and mechanisms.

In addition, the Commission should focus its energies on completing intercarrier compensation reform before conducting any rulemaking to adopt such a proposal, and indeed, active consideration of these block-grant proposals now could actually undermine intercarrier compensation reform. Various intercarrier compensation reform proposals contemplate additional funding from the federal USF, but if the Commission is simultaneously considering universal service reform that may include these amounts in some sort of block-grant program, it will be virtually impossible to gain agreement on the distribution of that intercarrier compensation reform in the first place. No party would agree to the size, scope, and eligibility of incremental support if it was all subject to change from one of the state allocation methods. Joint Board recommendations to pursue these issues now could therefore delay much-needed action on intercarrier compensation reform. The Commission should act first on intercarrier compensation reform, and provide certainty that whatever additional USF funding is adopted in that proceeding will be independent of the issues associated with this referral.

Block-grant proposals also will undoubtedly be subject to legal objections. For example, under the D.C. Circuit's decision in *USTA v. FCC*, 359 F.3d 554, 565-68 (D.C. Cir. 2004) ("*USTA II*"), where Congress has directed the FCC to take certain actions (as it has in § 254), the FCC is prohibited from delegating those responsibilities to state commissions. Permitting state commissions to decide which eligible carriers receive federal universal service funding could in some instances run afoul of that prohibition. *Cf.* Public Notice, Appendix A at 5 (acknowledging need for federal oversight). Similarly, federal support must be "sufficient" and "predictable," but some carriers may argue that under certain conditions allowing state commissions to determine specific carriers' funding would violate these requirements. *See id.* Whether these block-grant plans can survive these and other challenges will depend critically on the specific details of the

plans as they develop. The fact that the plans currently in the record do not have enough detail to make an informed judgment is therefore another reason to postpone action on these proposals for now.

Of the block-grant proposals, however, the SAM proposal offered by Commissioner Baum is the one most deserving of further investigation. The SAM proposal, which is still only a set of broad, conceptual outlines, seems to offer a coherent and potentially workable system that deserves further investigation. The SAM proposal is not sufficiently detailed at this point, however, to assess the concrete impacts that it might have. Moreover, even the SAM proposal itself recognizes that the FCC's allocation of funding among the states could depend partly on "the intercarrier compensation plan adopted by the FCC," *see* Public Notice, Appendix A at 3-4, which simply underscores that consideration of this proposal should be postponed until the FCC completes intercarrier compensation reform.

By contrast, the USERP block-grant proposal, and the USERP proposal as a whole, appear to be sharply inferior. USERP cobbles together a variety of approaches into one complex and somewhat internally inconsistent mishmash of rules, with multiple federal funds all serving different purposes. One of USERP's most dramatic changes would be the creation of a new \$1 billion federal "Portability Fund" for wireless carriers (a substantial increase over current wireless funding). Public Notice, Appendix D at 26-27. USERP asserts that the fund would sunset after five years, and the Commission would determine at that time whether the fund should be extended. *Id.* at 27. Such an arrangement would severely undermine the predictability of universal support. More perniciously, it would also build in hundreds of millions of dollars<sup>4</sup>

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<sup>4</sup> While the new wireless portability fund would be capped at \$1 billion, USERP compares that to the total funding provided to competitive eligible carriers (wireline *and* wireless) of

of new subsidies into the system that could then be diverted to other purposes at the conclusion of the initial five-year period. USERP's block-grant proposal is also not necessarily what it seems. USERP presents it as simply a variation on the SAM proposal, but in reality a state commission's discretion under the plan would be almost nonexistent given that each state's funding would be sized to allow each carrier in the state to cover the gap between a publicly known measure of embedded cost and a publicly known "Consumer Cost" (along with other limitations). See Public Notice, Appendix D at 24 ("distributions should be predictable and should be based on published data and explicit and predetermined calculations").

### CONCLUSION

For the foregoing reasons, the Joint Board should recommend immediate adoption of aspects of the Three Stage Package as described above, and should postpone recommendations on all other issues.

Respectfully submitted,

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\$800 million. Public Notice, Appendix D at 27. Funding to wireless carriers is therefore less than \$800 million, and thus the new subsidies would be more than \$200 million.

**CERTIFICATE OF SERVICE**

I hereby certify that on this 30<sup>th</sup> day of September, 2005, I caused true and correct copies of the forgoing Comments of AT&T Corp. to be served on all parties by mailing, postage prepaid to their addresses listed on the attached service list.

Dated: September 30, 2005  
Washington, D.C.

/s/ Peter M. Andros

Peter M. Andros

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